

D.N. FST-CV18-6036841-S : SUPERIOR COURT  
DANIA FELLER ANDERSON, ET AL. : J.D. OF STAMFORD/NORWALK  
V. : AT STAMFORD  
CONSERVATION COMMISSION OF  
THE TOWN OF WESTON : AUGUST 28, 2019

**BRIEF OF DEFENDANT TOWN OF WESTON CONSERVATION COMMISSION**

**I. PRELIMINARY STATEMENT**

This is an appeal from the decision of Defendant Town of Weston Conservation Commission (the “Commission”) approving the application of the Town of Weston (the “Town”) for a wetlands permit, in connection with the Town’s plans to construct a dog park. The decision of the Commission should be upheld and this appeal should be dismissed because: 1) the Commission was entitled to credit the evidence provided by the Town’s experts who concluded that the proposed dog park would not adversely affect the wetlands; and 2) Plaintiffs focus on a myriad of issues which are irrelevant to the seminal question of whether the evidence showed that the proposed dog park would adversely affect the wetlands. In short, Plaintiffs fail to meet their burden of proving that substantial evidence in the record does not support the Commission’s decision.

**II. STATEMENT OF FACTS**

The Town owns property located at Lords Highway East which is comprised of approximately 36 acres of wooded, undeveloped land (the “Moore Property”). R1. On January 23, 2018, the Town filed an application with the Commission seeking a permit to conduct a

regulated activity on the Moore Property in connection with its plans to construct a dog park (the “Application”). R1. Submitted with the Application was a letter from Town Engineer John Conte (“Conte”), P.E., a licensed professional engineer, which stated, *inter alia*:

The enclosed design plans and report with project description is a new application for the Weston Dog Park for an alternate access for the park to the Moore property from Lords Highway East. The original application for the park was to have an access off of Davis Hill Road.

The soils report from Soil & Wetland Science LLC, Otto R. Theall [“Theall”] professional soil scientist and design plans demonstrate a better entrance way where there are no wetland soils and no roadway improvements needed to Lords Highway East . . . Also enclosed are original soils reports from Otto R. Theall of the first application outlining existing wetlands adjacent to the access way proposed off of Davis Hill Road. . . .

R2.

In addition to other documents, an “Approval Letter” from the Westport Weston Health Department was submitted with the Application. R7. This letter was written by Mark A.R. Cooper (“Cooper”), Director of Health, and addressed the concern with potential off-site impact from dog urine. Cooper concluded: “It is my opinion, that the added nitrogen from dog urine at the proposed park, a 3 to 4 acre fenced area surrounded by a large area of natural vegetation, would be diminutive with no off site impact.” R7 at 2.

Cooper reasoned that “all added nitrogen becomes part of the natural nitrogen cycle and that a good portion is taken up by plant roots to grow, develop and produce seed. Areas with trees and other such vegetation that have deep roots will utilize more of the nitrogen before some ‘escapes’ deep into the soil and can impact water quality.” R7 at 2. He also pointed out that “[t]he experience of Directors of Health across the state, in areas of intensive development on small lot

sizes (1/2 to 1 acre in size), served by private on-site well and septic systems, if such nitrogen loading were to be [a] problem, the wells should be loaded with nitrogen at unacceptable levels. They are not.” R7 at 2. This analysis obviously took into account that a person produces much more urine on a daily basis than a dog does. R7 at 2. Additionally, lawn fertilizer contains large amounts of nitrogen, phosphorus and potassium, and is spread out on residential lawns each spring. But, there are no excessive nitrogen or phosphorous levels found in properly constructed wells. R7 at 3.

The Commission opened the public hearing on the Application on February 22, 2018. R104b. Conte presented the Application. He explained that the Town had previously come before the Commission with the same plan that would locate a dog park on the Moore Property, with an accessway closer to the wetlands. The Commission had approved that application but, since the opposition objected to the width of the access to the dog park, the Town looked for other options on Davis Hill Road. Those options turned out not to be feasible due to closer proximity to wetlands and greater impact on the neighbors. Consequently, the current Application sought to locate the 3.5 acre dog park with an accessway off Lords Highway East that can accommodate two-way traffic and with 22 parking spaces. R104b at 3-4. He reiterated that there are no wetlands near the proposed dog park and no proposed activity is near any wetland. R104b at 6 and 19.

Conte specifically stated why he disagreed with the findings of the report provided by the Intervenor’s expert, Steven Trinkaus (“Trinkaus”). R104b at 7-15. For example, he explained that there are two stone walls that act as check-dams. There are 520 feet between the top stone wall

and the wetlands. Due to these barriers and the distance to the wetlands, the small amount of drainage that will be added will not affect the wetlands. R104b at 15. Nevertheless, Conte agreed to increase the drainage system, to over design it, so as to address Trinkaus' concerns. R104b at 5. Conte also noted that no trees will be cut within the 520 feet either. R104b at 20. Additionally, the proposed driveway is gravel, not pavement. R104b at 20. The dog park also will have a five-foot chain link fence around it. R104b at 33. The area will be left in its natural state except for cleaning out dead trees and trimming tree limbs. R104b at 33. The extent of construction will be putting in a road and the fence around the park. R104b at 34-35.

Conte further explained that any ponding that is occurring near neighboring property has been caused by natural drainage which is not coming from Town property. Nor does this drainage issue have anything to do with the wetlands. R104b at 21-25. As Commission Chairman Michiel Zegers ("Chairman Zegers") made clear from the beginning:

. . .[Y]ou have to realize this is the Conservation Commission, so our charge in Weston as the Conservation Commission is [to] address the inlands, wetlands, and watercourse [*sic*] regulations in town. We don't address other issues, unless those issues impact the wetlands. Now that's a different, you know, jurisdiction than ours. So if people start to drift away from impacting to the . . . wetlands and watercourses, we will kind of, you know, try and narrow them back to get them on course to focus on what this Commission is tasked to do. . . .

R104b at 2.

Addressing a video submitted by another neighbor showing a high concentration of drainage, Conte also pointed out that the Town has not and will not be interfering with the culvert. Rather, someone altered the channel by putting in a pipe under the stone and this affects the

drainage. R104b at 27-29. The drainage map relied on by the opposition also is not a professional map; it was prepared in the 1970s by college interns. R104b at 109.

Conte directed the Commission to letters from the Health Department which indicated that there would be no pollution problem at the dog park as long as basic rules are enforced, such as picking up solid waste, which the Animal Control Officer, Department of Parks and Recreation, and Department of Public Works will enforce. R104b at 32 and 35-36. The solid waste could not easily get through the stone walls anyway. R104b at 38-39. The extra policing actually could improve the current situation since people walk their dogs in the area now even though there is no official dog park. R104b at 40-41. As also pointed out at the hearing, the Property currently contains feces from wild animals such as coyotes, squirrels and deer, but no neighbors are complaining about that. R104b at 96.

As concluded by the Health Department, dog urine will be broken down by the soil and, thereby, prevent pollution. R104b at 35; R7. Conte also emphasized that in one of the packages submitted by the opposition, there were statements from two qualified experts stating that a dog park would have no negative effect on wetlands as long as the rules of the dog park are followed. R104b at 111; R61 (App. G).

The public hearing continued on April 26, 2018. R104d. Conte informed the Commission that there had been minor changes to the plans to allow for additional trees to be saved and to make sure that no headlights would be shining into a neighbor's house. R104d at 6. The new plans would also create less semi-impervious surface. R104d at 8. Theall confirmed that there are no wetlands or watercourses within 100 feet of the proposed road and parking area. R104d at 18.

Robert Barneschi (“Barneschi”), a drainage expert, testified as well. R104d at 26. He explained that the plans call for less runoff or discharge than current conditions cause. R104d at 27. The parking spaces will not affect the flow of water and the impact on the wetlands will be negligible. R104d at 28 and 32.

Mark Harper (“Harper”), the Animal Control Officer, confirmed that he will enforce the rules at the dog park to make sure solid waste is disposed of, and there will be penalties for those who do not abide by the rules. R104d at 140. If he feels there is an ongoing problem that cannot be solved, then he will go to the First Selectman and ask that the dog park be closed. R104d at 141.

Chairman Zegers inquired as to whether it would be a feasible and prudent alternative to move the dog park from the central location on the Moore Property to the western side, farther away from the wetlands. R104d at 152. First Selectman Christopher Spaulding responded that the location was chosen because it was the farthest away and most equidistant to any other parcel of property, and there is a natural downgrade. R104d at 152. There is no engineering reason that the location could not be moved to another part of the Property. R104d at 153. When the Intervenor’s attorney was asked what prudent and feasible alternatives his clients could propose, he stated that they do not think there is one. R104d at 168.

The Commission deliberated on May 3, 2018, focusing on the Intervenor’s claims as follows:

- 1) The Commission does not have jurisdiction to consider the carbon footprint that may be caused by tree removal. R104e at 7. Additionally, the Town revised its plans to provide for the removal of far fewer trees than originally planned. R104e at 7-8.
- 2) Possible pollution caused by asphalt millings is no longer an issue because the Town is using stone gravel on the driveway. R104e at 8-10.
- 3) The Town's experts adequately addressed concerns with runoff, ponding, flooding and erosion. In fact, the evidence showed that there would be less runoff than currently exists, with negligible impact. R104e at 10-26. Chairman Zegers specifically stated that he found the Town's hydrologist more credible because the Intervenor's engineer did not even do his own calculations. R104e at 19.
- 4) The Commission does not consider feasible and prudent alternatives unless it finds that the project will cause an adverse impact to the wetlands. R104e at 26. However, it was noted that the Town had considered moving the dog park to a location on the Property further away from the wetlands, so as to satisfy the Intervenor. R104e at 28.
- 5) The Commission is not concerned with whether or not the Planning and Zoning Commission has approved the Town's project. R104e at 28-29.
- 6) The Application was not incomplete due to the wetlands not being fully delineated. The Regulations do not require that. The wetlands were adequately flagged. However, the Commission assumed in its deliberations that the wetlands are more extensive, as stated by the Intervenor's soil scientist. R104e at 29-33.

7) No one provided any kind of studies or scientific information to support the conclusion that dog waste is likely to unreasonably pollute wetlands close to the proposed dog park. The Intervenor did not meet their burden on this issue. There will also be regulations regarding waste removal that will be enforced, and the stone walls act as barriers. R104e at 33-42. The Commissioners discussed, however, that the Town be given the option of working with the Intervenor and the neighbors to see if a different location on the Property would be agreeable to everyone. R014e at 42-54 and 57-58 and 65-68.

Chairman Zegers made a motion that the Application be approved with an option for the Town to move the dog park to a specific alternate location on the Moore Property. The motion was adopted 4-1 in favor. R104e at 69-79. In its written decision, the Commission provided the following reasoning: “The Commission has reviewed all the items presented by the Intervenor and we feel that they have not shown that there would be a significant impact to the wetlands.” R99.

### **III. STANDARD OF REVIEW**

“In challenging an administrative agency action, the plaintiff has the burden of proof . . . The plaintiff must do more than simply show that another decision maker, such as the trial court, might have reached a different conclusion. Rather than asking the reviewing court to retry the case de novo . . . the plaintiff must establish that substantial evidence does not exist in the record as a whole to support the agency’s decision.” Tarullo v. Inland Wetlands & Watercourses Commission, 263 Conn. 572, 584 (2003) (citations and internal quotation marks omitted).



“In reviewing an inland wetlands agency decision . . . the reviewing court must sustain the agency’s determination if an examination of the record discloses evidence that supports any one of the reasons given. . . The evidence, however, to support any such reason must be substantial; [t]he credibility of witnesses and the determination of factual issues are matters within the province of the administrative agency. . . This so-called substantial evidence rule is similar to the sufficiency of the evidence standard applied in judicial review of jury verdicts, and evidence is sufficient to sustain an agency finding if it affords a substantial basis of fact from which the fact in issue can be reasonably inferred. . . The reviewing court must take into account [that there is] contradictory evidence in the record . . . but the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency’s finding from being supported by substantial evidence.” Id. (citations and internal quotation marks omitted).

If the inland wetlands agency does not state any reason for its decision, then “a trial court must search the record of the hearing before [the agency] to determine if there is an adequate basis for its decision.” Gagnon v. Inland Wetlands and Watercourses Commission, 213 Conn. 604, 611 (1990).

“The *sine quo non* of review of inland wetlands applications is a determination whether the proposed activity will cause an *adverse impact* to a wetland or watercourse.” River Bend Associates, Inc. v. Conservation & Inland Wetlands Commission, 269 Conn. 57, 74 (2004) (emphasis in original). “Evidence of general environmental impacts, mere speculation, or general concerns do not qualify as substantial evidence.” Id. at 71. Furthermore, in reaching its decision, the inland wetlands agency “is not required to believe any witness, even an expert, nor is it

required to use in any particular fashion any of the materials presented to it so long as the conduct of the hearing is fundamentally fair.” Unistar Properties, LLC v. Conservation and Inland Wetlands Commission, 293 Conn. 93, 114 (2009) (citations and internal quotation marks omitted).

#### **IV. ARGUMENT**

##### **A. The Commission Was Entitled To Credit the Evidence Provided By the Town’s Experts Who Concluded That the Proposed Dog Park Would Not Adversely Affect the Wetlands.**

As set forth above, in reaching its decision, the Agency was “not required to believe *any* witness, even an expert, nor [was] it required to use in any particular fashion any of the materials presented to it so long as the conduct of the hearing [was] fundamentally fair.” Unistar Properties, LLC v. Conservation and Inland Wetlands Commission, 293 Conn. at 114 (emphasis added).

Thus, the Commission was free to accept some, all or none of the conclusions reached by the many experts who provided information and opinions at the public hearing on the Application.

Plaintiffs and others opposed to the dog park took advantage of the opportunity to present testimony at the public hearing and to submit written reports. Nonetheless, it is clear that the Commission chose to reject the conclusions reached by Plaintiffs’ witnesses and to credit the opinions of the Town’s experts. Notably, Plaintiffs’ soil scientists, James McManus and George Logan, reached conclusions about pollution and wetlands impact without performing *any* of their own tests. They only conducted field observations, and reviewed application documents and plans. See Plaintiff’s brief at 18 and 20-21; R85 at 7. Their conclusions were also based on an assumption that waste disposal would not be enforced, contrary to the evidence provided at the public hearing. See Plaintiffs’ brief at 20.

In contrast, the evidence in the record fully supported the Town’s position that solid waste would not be a problem because park rules would require that it be disposed of immediately, and those rules would be strictly enforced with penalties, thereby ensuring that dog feces could not “escape” the site. In fact, the current situation likely would be improved because no one is required to pick up animal waste at the present time. Animal Control Officer Harper went so far as to state that he would seek a shut-down of the dog park if the rules could not be enforced. Stone wall barriers also would prevent any extraneous solid waste from ending up in off-site wetlands.

Health Department Director Cooper’s analysis also directly refuted the conclusions reached by McManus and Logan, by opining that almost all nitrogen from dog urine would be broken down before leaving the site, thereby causing no adverse impact to the wetlands. See Plaintiffs’ brief at 21.<sup>1</sup> His analysis made the most sense because he pointed out that much larger quantities of nitrogen and phosphorus are produced from other sources in people’s homes, yet not reaching excessive levels in wells or septic systems. Because these substances are sufficiently broken down so as not to pollute wells or septic systems that are in much closer proximity to the source of pollution than the proposed dog park is to the wetlands, it is only logical that these wetlands would not be adversely affected either, regardless of the topography of the parcel involved. See Plaintiff’s brief at 18.

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<sup>1</sup> By Plaintiffs’ own admission, McManus’ testimony was equivocal because he stated that “there’s a high *potential* that there’s a *potential* impact.” See Plaintiffs’ brief at 21.

The opinions of Town experts on this issue were also supported by two additional expert opinions that were submitted by the *opposition*. In a document entitled “Expert Opinion on Impact of Dog Parks on Wetlands Areas,” Martin L. Mador (“Mador”), a graduate of the Yale School of Forestry and Environmental Studies, with a master’s in Water Studies, stated: “The environmental threat from dog urine is minimal due to the small quantity of liquid. In addition, the urine is filtered effectively as it moves through the ground. . . .” R61 (App. G). Eric Leopold (“Leopold”), PhD, biochemist in organic chemistry, stated:

Evaporation, oxidation, photochemical degradation & ultraviolet light have the combined effect of neutralizing and destroying any bacteria present in urine, which is 98% water. The remaining chemicals of amino acids, vitamins, enzymes, antigens & immunoglobulins are unstable in the natural environment of earth/air/light & are rapidly degraded. Dog feces is a non-issue in a self-regulated Dog Park where it is collected by responsible dog owners & deposited in sealed containers. Dog urine is not a threat to humans, nor is it harmful [to] the environment & *it has no negative effect on the wetlands*.

R61(App. G) (emphasis added).

Plaintiffs attempt to undermine the opinions of Mador and Leopold by asserting that “[t]hose quoted had no knowledge whatsoever of the proposed site, never testified or were available for cross examination.” See Plaintiffs’ brief at 19. However, these experts – like Cooper – addressed the fact that components of dog urine are rapidly degraded by the natural environment, which obviously has universal application to any site, particularly one without structures of any kind. Moreover, Leopold’s opinion about dog feces being a non-issue in a regulated dog park is directly relevant to the site in the case at bar because the evidence demonstrated that there would be strict regulations for the proposed dog park. Additionally, the fact that Mador and Leopold did not testify and were not available for cross examination is not the

fault of the Town because it was an opponent of the dog park who submitted the opinions to the Commission.

As set forth above, Conte and Barneschi refuted additional expert testimony as well, with respect to ponding, flooding, drainage and runoff. On April 25, 2018, Stephen R. McDonnell (“McDonnell”), P.E. of WMC Consulting Engineers also submitted a revised drainage report which reflected minor changes that had been made to the Cultec system, which was specifically designed to capture and slow the discharge of storm water. R80. McDonnell concluded:

In summary, peak runoff rates directed to the residential area adjacent to Lord’s Highway East have been reduced from pre to post development conditions. Any minor increase in flow to the wetland areas, as a result of the construction of the access drive and parking lot associated with the Dog Park, would require stormwater runoff to travel 500 ft overland through the natural terrain and forest litter before reaching any point of concern. It is our opinion that any increases in peak flows during the 50-yr storm event are negligible and will not result in adverse impacts to the wetland system or areas downgradient east of Davis Hill Road.

R80 at 2.

Even if the Town’s experts had not so strongly refuted the additional expert testimony relied on by Plaintiffs, it could not qualify as substantial evidence because none of these experts opined about specific harm to the wetlands that would be caused by the proposed project. See, e.g. April 25, 2018 Trinkaus report (R90). General environmental impacts are not sufficient. River Bend Associates, Inc. v. Conservation & Inland Wetlands Commission, 269 Conn. at 71. “A proposed activity’s adverse impact on wetlands can be neither assumed nor presumed . . . . A significant potential for impact to wetlands is insufficient; the impact must be likely *and adverse*

. . . The inland wetlands agency cannot assume that any alterations to wetlands or [even] the density of development on adjacent land outside the wetlands will affect them; there must be a likely impact supported by substantial evidence in the record.” Patchen v. City of Milford Inland Wetlands Agency, 2015 WL 1244327, \*5 (Conn. Super.) (citations and internal quotation marks omitted; emphasis in original).

**B. Plaintiffs Focus On Several Issues Irrelevant to the Seminal Question of Whether the Proposed Dog Park Would Adversely Affect the Wetlands.**

Plaintiffs focus on several issues in their brief which are really “red herrings” because they address matters irrelevant to the question of whether there is substantial evidence to demonstrate that the Commission improperly determined that the proposed project would not have a significant, adverse impact to the wetlands.

First, Plaintiffs complain that the Town’s survey and site plans did not “reflect the full extent of expansive wetlands at the foot of what the Commission ultimately acknowledged is an Upland Review Area (URA) just below the proposed dog park that adjoins the wetlands.” See Plaintiffs’ brief at 8. Even if Plaintiffs were right about this, it is immaterial because the Commission, in its deliberations, assumed that the wetlands were more extensive as stated by McManus. The Commission also determined that the Application was not incomplete because the wetlands were adequately flagged. See Plaintiff’s brief at 9 and 10. Furthermore, Plaintiffs ignore that “[i]mpacts on the upland review area, even in close proximity to a wetland or watercourse, are insufficient to deny a permit to conduct a regulated activity, absent a finding that there is likely impact on wetlands and watercourses.” Blue Bird Prestige, Inc. v. Stratford Inland Wetlands and

Watercourses Commission, 2019 WL 3318477, \*5 (Conn. Super.), citing Cornacchia v. Environmental Protection Commission, 109 Conn. App. 346, 357-58 (2009). In any event, Plaintiffs cannot complain about a situation that they were free to remedy. McManus could have flagged any wetland he felt was not properly flagged and reported its precise location and size to the Commission. Having failed to do so, there is no reasonable basis for Plaintiffs to claim that the Commission lacked adequate information about the extent of the wetlands.

Plaintiffs also claim that the Commission lacked adequate information because the Town's site plans did not show the land's steep slopes or the ponding and flooding on the Moore Property and contiguous property. Nevertheless, they point out that their experts testified about "the significance of the slopes" and "the surface ponding" on the site. See Plaintiff's brief at 10-12. Plaintiffs also cite testimony given by a neighbor about "flooding and ponding." See Plaintiff's brief at 11.

Since the Commission was apprised of these concerns, it is apparent that Plaintiffs are complaining about the Commission's mindfulness of its jurisdiction; recognizing the preexisting nature of the flooding and ponding, and crediting the testimony of the Town's experts. Again, it was the Commission's prerogative to make those factual and credibility determinations.

Second, Plaintiffs maintain that the Commission violated the Regulations because the Town Wetlands Map does not contain all of the wetlands that were identified during the course of the public hearing. See Plaintiffs' brief at 12. Not surprisingly, Plaintiffs fail to state what relevance this has to the Application because there is none. Wetlands are often discovered based on precise mapping of a particular piece of property. The Town also did not need to "describe

how it will change, diminish or enhance the ecological communities and functions of the wetlands or watercourses involved in the application” because there was nothing to describe; the project would have no impact on the wetlands or watercourses as the Commission concluded. See Plaintiff’s brief at 13. Conte, Barneschi and McDonnell rejected Trinkaus’ conclusions as well, so they fully supported the Town’s position that runoff would not be a problem. See Plaintiff’s brief at 14. An inland wetlands commission generally has no jurisdiction to consider drainage issues either. Those issues are under the purview of a planning and zoning commission.

Third, there is no support for Plaintiff’s contention that the Commission acted improperly by failing to require the Town to present alternatives to the proposed dog park. See Plaintiff’s brief at 14. “[T]he law is now well established that absent an agency finding of an adverse impact based on substantial evidence, the applicant is not required to present alternatives to the proposed activity.” Patchen v. City of Milford Inland Wetlands Agency, 2015 WL 1244327 at \*6. Here, the Commission found no adverse impact so the Town did not need to present alternatives.

Nor was this an issue of “fundamental fairness.” As set forth above, Chairman Zegers inquired as to whether it would be a feasible and prudent alternative to move the dog park to the western side of the Moore Property, *farther away from the wetlands*. How could this be of any concern to Plaintiffs who were focused on alleged negative impact to the wetlands? Moreover, when Plaintiffs’ attorney was given an opportunity to comment on this issue, he chose only to say that Plaintiffs believe there are no prudent and feasible alternatives. He did not object to this issue being raised on the last night of the hearing or state that his clients were being denied “fundamental fairness” in any way. Therefore, as a procedural matter, Plaintiffs are precluded



from raising this issue on appeal. “Our Supreme Court has previously held that [a] party to an administrative proceeding cannot be allowed to participate fully at hearings and then, on appeal, raise claims that were not asserted before the board.” Patty v. Planning and Zoning Commission, 188 Conn. App. 115, 120 (2019) (citation and internal quotation marks omitted; alteration in original).

Fourth, Plaintiffs make the specious argument that the Commission violated the Regulations by failing to state “meaningful and complete reasons for its decision. . .” See Plaintiffs’ brief at 17. Like General Statutes Section 22a-42a(d)(1), the applicable Regulation contains only a general requirement that “[t]he Commission shall state upon its record the reasons and bases for its decision.” See Plaintiffs’ brief at 16. The Commission did just that by stating that it “has reviewed all the items presented by the Intervenors and we feel that they have not shown that there would be a significant impact to the wetlands.” R99. Although Plaintiffs would have preferred more detailed findings, the Commission was not obliged to provide them. Even if the Commission had provided no reason or basis for its decision, the Court still would be required to search the record to determine if substantial evidence supported the Commission’s decision. See Northern Heights, LLC v. Clinton Inland Wetlands and Conservation Commission, 2011 WL 1759817, \*3 (Conn. Super.) (“[T]he exception to the ‘search the record’ rule applies only when the town’s regulations impose upon the agency specific requirements that are greater than the requirements set forth in the applicable statute.”)

Fifth, even if Plaintiffs were correct about the project causing high levels of runoff and exacerbating flooding, the Commission had no authority to deny the Application on this basis

unless there was substantial evidence that such conditions will cause specific adverse harm to the wetlands. Nor did the Commission have the jurisdiction to remedy any flooding that might currently exist on adjacent properties. Plaintiffs cite no legal authority supporting their position on this issue as well, because there is no such authority. See Plaintiffs' brief at 22-29.

Finally, Plaintiffs inappropriately impugn the reputations of the Town's experts. See Plaintiffs' brief at 23-25. As set forth above, it is for the Commission to judge the credibility of witnesses. In order for Plaintiffs to succeed, they must show that the Town's proposal has an adverse impact on the wetlands. Plaintiffs' failure to do so is fatal to their appeal.

## **V. CONCLUSION**

The Record reflects that the Commission acted properly. The Commission understood and respected the limits of its jurisdiction, spent multiple nights listening to and evaluating information provided by all interested parties, and rightfully came to the conclusion that the permit for the dog park should issue. Accordingly, the Commission respectfully submits that this appeal must be dismissed.

**THE DEFENDANT**  
**CONSERVATION COMMISSION**  
**OF THE TOWN OF WESTON**

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### **CERTIFICATION**

I hereby certify that a copy of the above was or will be delivered electronically on the date hereof to all attorneys and self-represented parties of record and to all parties who have not appeared in this matter and that written consent for electronic delivery was received from all attorneys and self-represented parties receiving electronic delivery:

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